

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-03-70
	§	C.A. No. C-07-342
NOE NICOLAS GARZA,	§	
Defendant/Movant.	§	

**ORDER**

Pending before the Court is Defendant Noe Nicolas Garza's ("Garza" or "Appellant") motion to proceed *in forma pauperis* on appeal from this Court's denial of his motion under 28 U.S.C. § 2255. (D.E. 85.) The application submitted by Garza contains his testimony that he is indigent, although it does not state whether he has any assets or income other than prison employment. He has also provided a printout of information concerning his prison account as of March 18, 2008, although it contains detailed information concerning transactions only from November 2007 through January 2008. (D.E. 85 at 3.)<sup>1</sup> That document indicates that, as of March 18, 2008, Garza had a balance of \$60.64 in his account, that his average daily balance over the six months preceding his application was \$53.11, and that deposits to his account during the same period totaled \$1322.72.

The foregoing information demonstrates that although Appellant cannot afford to prepay the \$455 appellate filing fee, he can pay the fee in installments without undue hardship. While his appeal is not governed by the Prison Litigation Reform Act, there is no prohibition against collection of the appellate filing fee in installments where an inmate has the ability to pay in installments

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<sup>1</sup> It appears that the full print-out has not been provided.

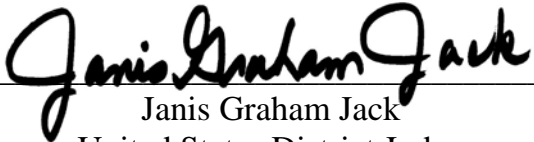
without undue hardship. Accordingly, Appellant's motion to proceed *in forma pauperis* (D.E. 85) is GRANTED and the following orders are entered:

1. The Clerk shall file the Appellant's notice of appeal without prepayment of the appellate filing fee.
2. The Appellant is not required to pay an initial partial appellate filing fee.
3. The Appellant shall pay \$455, the full appellate filing fee, in monthly installments to the United States District Court.
4. The Bureau of Prisons shall deduct 20% of each deposit made to the Appellant's inmate trust account and forward payments to the United States District Court on a regular basis provided the account exceeds \$10.00.
5. The Appellant shall execute all consents and other documents required by the agency having custody of the Appellant to authorize the necessary withdrawals from his trust account.
6. The Clerk shall send a copy of this Order to the Inmate Accounting Officer and Paralegal Specialist, FCI Bastrop, Post Office Box 730, Bastrop, Texas 78602.

NOTICE TO THE APPELLANT:

If you do not wish to pay the appellate filing fee as set forth in this Order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute the appeal. Your notice must be mailed within 30 days of the date of this Order.

It is so ORDERED this 30th day of April, 2008.

  
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Janis Graham Jack  
United States District Judge